



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

December 26, 2019

Return Receipt Requested

Certified Mail #7015 3010 0001 1267 2071

In Reply Refer To:

EPA Complaint No. 01D-20-R5

Preston D. Cole
Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Post Office Box 7921
Madison, WI 53707-7921

Re: Rejection and Referral of Administrative Complaint

Dear Secretary Cole:

This letter is to notify you that the Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is rejecting and referring a complaint received by (b) (6) Privacy, (b) (7)(C) Disclosure (the Complainant) filed against the Wisconsin Department Natural Resources (WI DNR) and received by ECRCO on December 4, 2019. The complaint alleges that the WI DNR discriminated against (b) (6) Privacy, (b) (7)(C) Disclosure on the basis of disability by denying his request for reasonable accommodation related to his disability, and then retaliating against (b) (6) Privacy, (b) (7)(C) Disclosure by terminating his employment at the WI DNR as of February 7, 2019, in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504.) After careful consideration, ECRCO has determined that it must reject this complaint and refer it to the U.S. Equal Employment Opportunity Commission (EEOC).

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

During a telephone conversation on December 4, 2019, ECRCO staff explained our preliminary review process to the Complainant and sought clarification about the allegations raised in the

complaint. ECRCO staff explained that complaints of discrimination based on disability that are processed under EPA's nondiscrimination regulation must be filed within 180 days of the last instance of the alleged discrimination unless an appropriate reason exists to waive the filing deadline. The Complainant requested this waiver as the complaint was filed more than 11 months after receiving notice of his termination of employment. Based on information received from the Complainant, ECRCO has denied the request for a waiver and finds that ECRCO does not have jurisdiction over the complaint.

ECRCO intends to refer this complaint to the EEOC, which was explained to the Complainant during a telephone conversation with EPA staff on December 19, 2019. The Complainant stated that he understood and consented to the referral, as described in 29 CFR 37.6(c)(1) (and 29 C.F.R. Part 1640), "[i]f an agency determines that it does not have jurisdiction over a complaint of employment discrimination under either section 504 or title II and determines that the EEOC may have jurisdiction under title I, the agency shall promptly refer the complaint to the EEOC for investigation and processing under title I of the ADA." Accordingly, as the EEOC may have jurisdiction over this matter under Title I of the ADA, ECRCO is referring this complaint to the EEOC's Milwaukee office for appropriate action.

We have enclosed a copy of our letter to the EEOC referring this complaint for your information. In light of the above, we are closing this complaint with ECRCO as of the date of this letter. If you have questions about this letter, please contact Debra McGhee, by phone at (202) 564-4646, by email at mcghee.debra@epa.gov, or by mail at 1200 Pennsylvania Avenue, NW, Mail Code 2310A, Room 2524, Washington, DC, 20460-1000.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dorka" followed by a stylized flourish. Below the signature is the word "for" in a small, handwritten font.

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosure

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Cheryl Newton
Acting Deputy Regional Administrator
Deputy Civil Rights Official
US EPA Region 5

T. Leverett Nelson
Regional Counsel
US EPA Region 5

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WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

December 26, 2019

Return Receipt Requested

Certified Mail#: 7015 3010 0001 1267 2064

In Reply Refer to:

EPA Complaint No: 01D-20-R5

Rosemary Fox
Director
U.S. Equal Employment Opportunity Commission
310 West Wisconsin Avenue Suite 500
Milwaukee, WI 53203-2292

Re: Referral of Administrative Complaint

Dear Ms. Fox:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is referring a complaint received December 4, 2019, from [REDACTED] a former employee of the Wisconsin Department of Natural Resources (WI DNR). The complaint alleges that the WI DNR discriminated against [REDACTED] on the basis of disability by denying his request for reasonable accommodation due to his disability and retaliating against him by terminating his employment as of February 7, 2019, in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504).

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

However, as described in 29 CFR 37.6(c)(1) (and 29 C.F.R. Part 1640), "[i]f an agency determines that it does not have jurisdiction over a complaint of employment discrimination under either section 504 or title II and determines that the EEOC may have jurisdiction under title I, the agency shall promptly refer the complaint to the EEOC for investigation and

processing under title I of the ADA.” In the present case, ECRCO has rejected this complaint because it was not filed within 180 days of the alleged discriminatory act and a waiver of the deadline is not reasonable given the circumstances of the case. Accordingly, as the EEOC may have jurisdiction over this matter under Title I of the ADA, ECRCO is referring this complaint to the EEOC’s Milwaukee office for appropriate action. We have notified the complainant through certified mail that the complaint is being referred to the EEOC and provided your contact information. A copy of our rejection and referral letter as well as the original complaint are enclosed.

Thank you in advance for your assistance. If you have any questions about this correspondence, please contact Dale Rhines, Deputy Director, at (202) 564-4174, by e-mail at rhines.dale@epa.gov or by mail at U.S. EPA External Civil Rights Compliance Office, (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,

A handwritten signature in black ink, appearing to read "Lilian S. Dorka", with a stylized flourish at the end.

Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosures

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Leverett T. Nelson
Regional Counsel
EPA Region 5

Cheryl Newton
Acting Deputy Regional Administrator
Deputy Civil Rights Official
EPA Region 5